

REMARKS

Applicant has carefully studied the nonfinal Examiner's Action mailed December 24, 2002, and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings and numbered paragraphs that correspond to the centered headings and paragraph numbering employed by the Office, to ensure full response on the merits to each finding of the Office.

1. Applicant acknowledges that claims 1-6 are readable on the elected species.
2. Applicant acknowledges the withdrawal of claims 7-12.

Claim Rejections - 35 U.S.C. § 112

3. Claims 3-6 stand rejected under 35 U.S.C. § 112, second paragraph, because the phrase "said imperforate cap" as recited in each of said claims is ambiguous in view of the recital of "an imperforate cap" recited in claim 1 and the same recital in claims 3 and 5. Claim 5 is further confusing in that it appears to claim an imperforate cap at the second end of the bailer as recited in claim 1 and an additional imperforate cap on the downspout. Cancellation of claims 3-6 has rendered moot this ground of rejection.

Claim Rejections - 35 U.S.C. § 102

4. Applicant acknowledges the quotation of 35 U.S.C. § 102(b).

5. Claims 1-4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Robbins. Cancellation of claims 2-4 has rendered moot the rejection of those claims. Reconsideration and withdrawal of this ground of rejection as it relates to claim 1, currently amended, is requested for the reasons that follow.

The Robbins structure has two embodiments. In the first embodiment, bail member 16 is removed from its screw-threaded engagement with the "upper extremity" of body member 11, septum fitting 18 is screw-threadedly engaged to said upper extremity of body member 11, and then top closure fitting 21 is screw-threadedly engaged to external threads 22 formed in said septum member. Bottom closure member 23 screw-threadedly engages the "bottom" of tube 11. In a second embodiment, septum fitting 18 is not used. Instead, bail member 16 is removed, as in the first embodiment, and top closure fitting 21 screw-threadedly engages the upper extremity of tube 11.

Clearly, the need to first remove bail member 16 is common to both embodiments. Applicant did not follow the teachings and suggestions of Robbins. Handle 12 of Applicant's structure is formed integrally with elongate tubular body 16 and cannot be removed therefrom. Applicant's structure includes no removable bail member 16. Thus, the step of removing bail member 16 from tube 11, required in both embodiments of Robbins, is obviated in the structure invented and claimed by Applicant.

Applicant's structure has less parts than both embodiments of Robbins and is thus easier to use. A worker in the field need not remove bail member 16 preparatory to screw-threading septum 18 onto tubular member 11 and closure means 21 to said septum member (first embodiment) or preparatory to screw-threading said closure means 21 directly onto said tubular member 11. There being no removable bail member 16 in Applicant's structure, a user of Applicant's invention merely needs to screw-threadedly engage a first closure member with the threads formed on the first end of elongate tubular body 16 and a second closure member with the threads formed on the downspout.

Clearly, the first embodiment of Robbins has five (5) parts and the second embodiment of Robbins has four (4) parts. In Applicant's only embodiment, there are only three parts.

Top closure member 21 of Robbins cannot fit over bail top member 16 as is apparent from the Robbins drawings and from the Robbins specification that consistently describes the need to remove bail top member 16 before attaching either septum 18 or top closure member 21 thereto. Note the shallow structure of top closure member 21. It clearly cannot accommodate bail top member 16 and that is why its use requires the removal of said top bail member.

Moreover, even if top closure member 21 were deep enough to accommodate bail member 16, said top closure member 21 could not screw-threadedly engage the threads formed in the "upper extremity" of tubular body member 11 because said threads are already engaged by the screw-threads of top closure member 21. It would then require Applicant's disclosure to form a third set of screw-threads on tubular body member 21, said third set of screw-threads being positioned just to the left of the threads formed in the "upper extremity" (the right end as drawn) of tubular body member 21.

It is axiomatic that Applicant's own disclosure cannot be used to modify a prior art reference, as if Applicant's disclosure had preceded itself in time. It follows that it would not have been obvious at the time Applicant's invention was made to add the aforesaid third set of

screw-threads to the Robbins tubular main body 11, to remove the screw-threads on the "upper extremity" of said tubular main body 11 so that bail top member 16 is formed integrally with said tubular main body 11, to excise septum member 18 from the Robbins disclosure, and to increase the depth of top closure member 21 so that it could screw-threadedly engage the third set of screw-threads and accommodate bail top member 16.

The mere recitation of all the changes to the Robbins inventive structure that must be made before that structure can be said to anticipate Applicant's inventive structure makes it clear that Applicant is entitled to the *quid pro quo* promised to those who advance the useful arts.

In view of these remarks, the significance of all amendments to claim 1 should now be clear. By providing a first cap of depth sufficient to accommodate the handle that projects upwardly from the uppermost end of the elongate tubular body, Applicant reduced the number of parts required to provide a bailer that serves as its own transportation container. Instead of first having to remove bail top member 16 of Robbins, followed by attachment of either septum 18 and top closure fitting 21 or just top closure fitting 21, the user simply applies the first internally threaded imperforate cap to the externally threaded uppermost end of the bailer, in accommodating relation to handle 12, and the second internally threaded imperforate cap to the downspout. No parts need to be removed prior to such attachment. In this way, Applicant has defined over the contribution of Robbins.

Claim Rejections – 35 USC § 103

6. Applicant acknowledges the quotation of 35 U.S.C. § 103(a).
7. Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins in view of Hunkin et al. This ground of rejection has been rendered moot by the cancellation of claims 5 and 6.

Drawings

8. The drawings stand objected to because the reference numeral "16b" appears in the specification but not in the drawings. A Submission Of Proposed Drawing Changes For Approval of Examiner is filed herewith as a separate paper. The Submission includes a proposed drawing change adding said reference numeral to Fig. 1 of the drawings in permanent red ink.

Conclusion

9. Applicant agrees that the art made of record and not relied upon is not more pertinent to the claimed invention than the art cited.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested. Applicant thanks the Office for its careful examination of this important patent application.

Very respectfully,

SMITH & HOPEN

By:


Ronald E. Smith
Suite 220
15950 Bay Vista Drive
Clearwater, FL 33760
(727) 507-8558
Attorneys for Applicant

Dated: August 5, 2004

CERTIFICATE OF FACSIMILE TRANSMISSION
(37 C.F.R. 1.8 (a))

I HEREBY CERTIFY that this Amendment A, including Introductory Comments, Amendments to the Claims, and Remarks, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 3652, Attn: Dean J. Kramer, 703-872-9326 on August 5, 2004

Dated: August 5, 2004


Charlene Morgan